

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

Page 1 of 2

**DOCKET NO.:** 2007-0627-LII-E **TCEQ ID:** RN105071922 **CASE NO.:** 33281**RESPONDENT NAME:** Philip Wetzel

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input checked="" type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 913 West Holiday, Rockwall, Rockwall County</p> <p><b>TYPE OF OPERATION:</b> Landscape and irrigation installation business</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> A complaint was received on August 2, 2006, regarding the Respondent's advertisement of irrigation installation services. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on August 6, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b> <b>TCEQ Attorney/SEP Coordinator:</b> None <b>TCEQ Enforcement Coordinator:</b> Ms. Cynthia McKaughan, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-0735; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468 <b>Respondent:</b> Mr. Philip Wetzel, 913 West Holiday, Rockwall, Texas 75087-2151 <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

## VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> August 2, 2006</p> <p><b>Date of Investigation Relating to this Case:</b> March 27, 2007</p> <p><b>Date of NOE Relating to this Case:</b> March 30, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a complaint investigation. One violation was documented.</p> <p><b>WATER</b></p> <p>Failure to hold a current irrigator license or employ individuals who hold current irrigator licenses prior to advertising irrigation installation services. Specifically, the Respondent advertised installation services on the internet [30 TEX. ADMIN. CODE §§ 30.5(b) and 344.4(a), TEX. WATER CODE § 37.003, and TEX. OCCUPATIONS CODE § 1903.251].</p>	<p><b>Total Assessed:</b> \$237</p> <p><b>Total Deferred:</b> \$47  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$190</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that by April 19, 2007, the Respondent had removed references to installation services from his internet advertisement.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

**TCEQ**

**DATES**

Assigned  
PCW

2-Apr-2007  
19-Apr-2007

Screening

20-Apr-2007

EPA Due

## RESPONDENT/FACILITY INFORMATION

Respondent

Philip Wetzel

Reg. Ent. Ref. No.

RN105071922

Facility/Site Region

4 - Dallas/Fort Worth

Major/Minor Source

Minor

## CASE INFORMATION

Enf./Case ID No.

33281

Docket No.

2007-0627-LII-E

Media Program(s)

Irrigators

Multi-Media

Admin. Penalty \$ Limit Minimum

\$0

Maximum

\$2,500

No. of Violations

1

Order Type

1660

Enf. Coordinator

Cynthia McKaughan

EC's Team

EnforcementTeam 8

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)**

Subtotal 1

\$250

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History

5% Enhancement

Subtotals 2, 3, & 7

\$12

Notes

The Respondent received one NOV for same or similar violation at this site in the past five years.

Culpability

No

0% Enhancement

Subtotal 4

\$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply

10% Reduction

Subtotal 5

\$25

Before NOV

NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with x)

Notes

The Respondent came into compliance on April 19, 2007.

Total EB Amounts  
Approx. Cost of Compliance

\$1  
\$450

0% Enhancement\*

\*Capped at the Total EB \$ Amount

Subtotal 6

\$0

**SUM OF SUBTOTALS 1-7**

Final Subtotal

\$237

**OTHER FACTORS AS JUSTICE MAY REQUIRE**

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Adjustment

\$0

Notes

Final Penalty Amount

\$237

**STATUTORY LIMIT ADJUSTMENT**

Final Assessed Penalty

\$237

**DEFERRAL**

20%

Reduction

Adjustment

-\$47

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

**PAYABLE PENALTY**

\$190

Screening Date 20-Apr-2007

Docket No. 2007-0627-LII-E

PCW

Respondent Philip Wetzel

Policy Revision 2 (September 2002)

Case ID No. 33281

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN105071922

Media [Statute] Irrigators

Enf. Coordinator Cynthia McKaughan

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

## &gt;&gt; Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

The Respondent received one NOV for same or similar violation at this site in the past five years.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 5%

Screening Date 20-Apr-2007

Docket No. 2007-0627-LII-E

PCW

Respondent Phillip Wetzel

Policy Revision 2 (September 2002)

Case ID No. 33281

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN105071922

Media [Statute] Irrigators

Enf. Coordinator Cynthia McKaughan

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 30.5(b) and 344.4(a), Tex. Water Code § 37.003, and Tex. Occupations Code § 1903.251

Violation Description

Failed to hold a current irrigator license or employ individuals who hold current irrigator licenses prior to advertising irrigation installation services, as documented during a record review investigation conducted on March 27, 2007. Specifically, the Respondent advertised installation services on the internet.

Base Penalty \$2,500

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$2,250

\$250

## Violation Events

Number of Violation Events 1

23 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$250

One single event is recommended.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$237

This violation Final Assessed Penalty (adjusted for limits) \$237

## Economic Benefit Worksheet

**Respondent** Philip Wetzel  
**Case ID No.** 33281  
**Reg. Ent. Reference No.** RN105071922  
**Media** Irrigators  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$450	27-Mar-2007	19-Apr-2007	0.1	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to obtain a valid irrigator license. Date required is the investigation date and final date is the date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance	\$450	<b>TOTAL</b>	\$1
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# Compliance History

Customer/Respondent/Owner-Operator:	CN602794158	WETZEL, PHILIP	Classification:	Rating:
Regulated Entity:	RN105071922	WETZEL PHILIP	Classification:	Site Rating:
ID Number(s):				
Location:	913 W HOLIDAY, ROCKWALL, TX, 75087			
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	April 11, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 11, 2002 to April 11, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Cynthia McKaughan	Phone:	512-239-0735	

## Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No  |
| 3. If Yes, who is the current owner?   | N/A |
| 4. If Yes, who was/were the prior owner(s)?  | N/A |
| 5. When did the change(s) in ownership occur?  | N/A |

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
N/A
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
Date: 01/04/2007 (514351)  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 30, SubChapter A 30.5(b)  
Description: A person may not advertise or represent themselves to the public as a holder of a license or registration unless they possess a current license or registration. A person may not advertise or represent to the public that it can perform services for which a license or registration is required unless it holds a current l
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.  
N/A
- J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A





# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
PHILIP WETZEL  
RN105071922**

§ **BEFORE THE**  
§  
§ **TEXAS COMMISSION ON**  
§  
§ **ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2007-0627-LII-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Philip Wetzel ("Mr. Wetzel") under the authority of TEX. WATER CODE chs. 7 and 37 and TEX. OCCUPATIONS CODE ch. 1903. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. Wetzel appear before the Commission and together stipulate that:

1. Mr. Wetzel owns and operates a landscape and irrigation installation business at 913 West Holiday in Rockwall, Rockwall County, Texas (the "Facility").
2. TCEQ has general authority to regulate the design and installation of landscape irrigation systems, and the licensing of landscape irrigators and installers, pursuant to TEX. OCCUPATIONS CODE ch. 1903.
3. The Commission and Mr. Wetzel agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Wetzel is subject to the Commission's jurisdiction.
4. Mr. Wetzel received notice of the violations alleged in Section II ("Allegations") on or about April 4, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Wetzel of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Two Hundred Thirty-Seven Dollars (\$237) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr.



Wetzel has paid One Hundred Ninety Dollars (\$190) of the administrative penalty and Forty-Seven Dollars (\$47) is deferred contingent upon Mr. Wetzel's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Mr. Wetzel fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Mr. Wetzel to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Mr. Wetzel have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that by April 19, 2007, Mr. Wetzel had removed references to installation services from his internet advertisement.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. Wetzel has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner and operator of the Facility, Mr. Wetzel is alleged to have failed to hold a current irrigator license or employ individuals who hold current irrigator licenses prior to advertising irrigation installation services, in violation of 30 TEX. ADMIN. CODE §§ 30.5(b) and 344.4(a), TEX. WATER CODE § 37.003, and TEX. OCCUPATIONS CODE § 1903.251, as documented during a record review conducted on March 27, 2007. Specifically, Mr. Wetzel advertised installation services on the internet.

## **III. DENIALS**

Mr. Wetzel generally denies each allegation in Section II ("Allegations").

the first of these is the fact that the system is not a simple one, and that the results are not always the same.

The second is the fact that the system is not a simple one, and that the results are not always the same.

The third is the fact that the system is not a simple one, and that the results are not always the same.

The fourth is the fact that the system is not a simple one, and that the results are not always the same.

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The eleventh is the fact that the system is not a simple one, and that the results are not always the same.

The twelfth is the fact that the system is not a simple one, and that the results are not always the same.

The thirteenth is the fact that the system is not a simple one, and that the results are not always the same.

The fourteenth is the fact that the system is not a simple one, and that the results are not always the same.

The fifteenth is the fact that the system is not a simple one, and that the results are not always the same.

The sixteenth is the fact that the system is not a simple one, and that the results are not always the same.

The seventeenth is the fact that the system is not a simple one, and that the results are not always the same.

The eighteenth is the fact that the system is not a simple one, and that the results are not always the same.

#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Wetzel pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Wetzel's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Philip Wetzel, Docket No. 2007-0627-LII-E" to:  
  

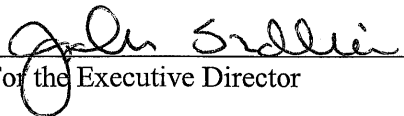
Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon Mr. Wetzel. Mr. Wetzel is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Wetzel in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Mr. Wetzel, or three days after the date on which the Commission mails notice of the Order to Mr. Wetzel, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.



## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director


8/21/2007  
\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

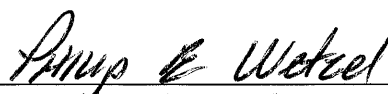
I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Signature

5-17-07  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Philip Wetzel

President  
\_\_\_\_\_  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

